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An unending variety of topics

Friday, March 28, 2008

Laches

Laches is the common-law name for the concept more commonly known as "the statute of limitations."[*] The idea is that, if a wrong has been done, or there is otherwise a dispute, we put a limit on the time within which the victim or the victim's estate can file charges or sue for damages. Laches or statutes of limitations apply to practically all kinds of wrongs of any nature. There are three strong reasons for setting time limits on redressing wrongs:

(1) Memories fade, witnesses die, and evidence is degraded or destroyed, rendering the rights and wrongs of the case increasingly uncertain and susceptible to biased propaganda.

(2) Security, confidence in, and stability of legal rights are crucial to a civilized legal system. But if we go back far enough, the "chain of title" for almost every legal right we have (including our political as well as economic rights) can be plausibly argued to be illegitimate due to some kind of unredressed wrong: some commission of force or fraud that was never remedied. Without a time limit, hardly any legal right of almost any kind could be held with legal security.

(3) Having the estate of one person be responsible to the estate of another person for a wrong committed by the ancestor of one to the ancestor of the other gets us too far away from the individual responsibility and the shaping of behavior through incentives that is at the core of law.

Laches should also be a core political principle. Allowing some classes of citizens to extract "reparations" from other classes of citizens for harms done by some or many of the ancestors of members of one class to some or many of the ancestors of another class, without setting any time limits, renders the legal rights of all persons insecure. Evaluations of ancient wrongs are susceptible to very distorted propaganda. Punishments of individuals who did not commit the wrongs do not deter the recurrence of such wrongs in the future, and indeed are themselves wrongs that foster further resentment and breed more future claims for redress. The moral imperative holding the members of one very imperfectly defined class, rather than persons who actually committed the wrongs, for the wrongs committed to some of the members or ancestors of another class, already doubtful, becomes increasingly doubtful as time goes by, as does the power of such laws or other political acts to shape behavior to desirable ends through incentives.

[*] Technically, the term "statute of limitations" applies where a statute expressly sets a time limit, and the doctrine of laches applies where no such statute exists.

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Nick Szabo

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Posted by Nick Szabo at 1:55 PM

5 comments:

Daniel A. Nagy said...

Unfortunately, "helping" to redress such obviously obsolete wrongs has grown into a huge, lucrative business.
Even less fortunately, a disturbingly large number of "beneficiaries" treat such "compensation" as treasure trove, not having the integrity to reject it. Too often, greed blinds peoples' better judgment.
There are quite a few law firms trying to shake down various Swiss and German entities for damages linked to the Holocaust in particular and World War II in general in return for getting a percentage from the compensation. As a grand-son of holocaust survivors, I find this business disgusting, breeding animosity, encouraging dishonest behavior and undermining trust.

However, I think that time limitation is not the best solution, because any particular time limit is somewhat arbitrary and difficult to justify. I think the principles of personal responsibility that you mention in your post would make for a more straightforward, explicit approach. Something along the lines of everyone being responsible only for crimes that they personally commit and being entitled to compensation only for wrongs committed against them personally (e.g. crimes in which they can be identified as victims).

Thus, while I wholeheartedly agree that compensation claims must expire for all the reasons you mention, I am not sure that a rigid time limit is the right means to this end.

10:50 AM

nick said...

The cases you cite probably combine corporate immortality with the doctrine of *respondeat superior*, the idea that a company is responsible for the acts of its employees while on the job. This is a pretty entrenched doctrine, with some good reasons for it. For these cases at least the time limit is a much better solution.

12:50 PM

Daniel A. Nagy said...

I wrote *entities*, because it is sometimes corporations, sometimes municipalities and sometimes the (federal) government. While it might be argued that one can decide for themselves what corporations they join as employees or invest into, the "choice" of municipality and especially citizenship is not voluntary at all. Thus, the mixing of these two principles (are states and municipalities immortal, too?) is even stinkier in those cases.

Respondeat superior is a tricky issue. As I understand it (though I would **love** to see a post in this blog about its history and economic benefits), the most compelling reason for it is that acting within an organization, a person is capable of doing much more damage. To the extent that it is unreasonable to expect that the person has even nearly enough assets to compensate for it, while the corporation often does. This is actually the most important reason why I am in a (part time) employment contract with a company that I work for; some clients want to be sure that the company could be sued for damages, should I do something bad to them. Otherwise, it would have been more beneficial both for me and the company if I rendered services on a b2b contractual basis. Now, of course, we could have included such responsibility in the (service) contract, but because it is not uncommon for our work to involve actors in two or three different jurisdictions, it is not reasonable to expect our clients to make sense of an entangled web of contracts (often drafted in different languages, construed under different laws). However, the (almost) universally held doctrine of *respondeat superior* addresses such concerns.

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As such, the doctrine helps establishing trust toward the employees of a certain organization; with greater power comes greater responsibility.

But when people whose grandparent have been enslaved or otherwise abused, demand compensation from a corporation, whose shareholders, employees and management have not been born when the crimes have been committed, while the shareholders, employees and managers that were involved in those atrocities are long dead is clearly an abuse of the doctrine.

3:11 PM

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Daniel A. Nagy said...

BTW, how do *laches* and *adverse possession* relate?

3:16 PM

nick said...

Daniel, I think your points on *respondeat superior* on well taken, but I will have to punt elaboration to a future time.

On laches, I should point out that I greatly oversimplified it in my short post (always a hazard when trying to summarize law) by equating it to statute of limitations. One point of difference important for our political analogy is that laches does not specify a fixed time. Statute of limitations do specify a fix time, but there is often a lot of wiggle room.

Laches is generally based on three loosely defined elements. Usually all three elements must be satisfied, but one might also use them as factors to be weighed in a balance: (1) Plaintiff knew or should have known that he had been legally wronged, (2) plaintiff nevertheless delayed bringing a claim for an unreasonable time, and (3) defendant was materially prejudiced by the delay.

Material prejudice might occur from prejudice to the defedant's case (through loss of evidence, witnesses, etc.) or from economic harm from the delay. First example of the latter: defendant, believing a property is his, maintains or improves property. Plaintiff, who believes and can prove the property was stolen from him, lets the defendant incur these expenses and then files suit for return of the property. Second example: dispute over employee stock options; plaintiff waits until the options vest "in the money", then sues claiming that the options were his and that he is entitled to all the gains from them. Plaintiff allowing the defendant to incur the economic risk, then suing upon success, is material prejudice to the defendant.

On our political analogy, often simply being deprived of a specific property or political right one has gotten used to thinking of as one's own and enjoying, constitutes material prejudice. Also, the erorrs of interest rate and inflation adjustments grow exponentially with time, and any such errors in favor of the victims would cause material prejudice to the alleged wrongdoers.

"Reasonable delay" is just place-filler that says one must go read the cases and analogize to argue whether the delay in a given new case was "reasonable." Time taken in negotiating with the defendant cannot be counted as part of the unreasonable period.

Under our political analogy to the return of stolen property or political rights, or reparations, one could argue that if an aggrieved individual or group has frequently agitated ever since the wrong occurred to redress the wrong, then the amount of time considered reasonable should be much longer, as long as they keep agitating. They have not the legal maxim goes "slept on their rights." A related important idea is notice: the victims should periodically renew their claims so that the alleged wrongdoers are always on notice of their claim for reparations, or the return of stolen property, or the like. OTOH a political claim that has never been heard by the alleged wrongdoers until decades after the event is presumptively unreasonably.

On adverse possession, it is considered a "legal" rather than "equitable" doctrine and is thus covered in the U.S. at least by statutes of limitations rather than laches.

In summary, the main point of the laches analogy is to provide a set of principles for rational political argument about how much delay is reasonable for old claims for return of political rights, property, or payment of reparations. It's not about setting specific

time limits.

1:00 PM

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